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HOUSE BILL 75

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Ben Lujan

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; EXTENDING THE LIFE OF CERTAIN INVESTMENT  
CREDIT PROVISIONS; EXTENDING THE PERIOD FOR APPLICATION OF  
CERTAIN PROVISIONS FOR APPORTIONMENT OF BUSINESS INCOME FOR  
CORPORATE INCOME TAX PURPOSES BY TAXPAYERS WHOSE PRINCIPAL  
BUSINESS ACTIVITY IS MANUFACTURING.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-4-10 NMSA 1978 (being Laws 1993,  
Chapter 153, Section 1, as amended) is amended to read:

"7-4-10. APPORTIONMENT OF BUSINESS INCOME.--

A. Except as provided in Subsection B of this  
section, all business income shall be apportioned to this state  
by multiplying the income by a fraction, the numerator of which  
is the property factor plus the payroll factor plus the sales  
factor and the denominator of which is three.

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1           B. For taxable years beginning prior to January 1,  
2     ~~[2011, each]~~ 2020, a taxpayer whose principal business activity  
3     is manufacturing may elect to have business income apportioned  
4     to this state by multiplying the income by a fraction, the  
5     numerator of which is the property factor plus the payroll  
6     factor plus twice the sales factor and the denominator of which  
7     is four. To elect the method of apportionment provided by this  
8     subsection, the taxpayer shall notify the department of the  
9     election, in writing, no later than the date on which the  
10    taxpayer files the return for the first taxable year to which  
11    the election will apply. The election will apply to that  
12    taxable year and to each taxable year thereafter until the  
13    taxpayer notifies the department, in writing, that the election  
14    is terminated, except that the taxpayer shall not terminate the  
15    election until the method of apportioning business income  
16    provided by this subsection has been used by the taxpayer for  
17    at least three consecutive taxable years, including a total of  
18    at least thirty-six calendar months. Notwithstanding any  
19    provisions of this subsection to the contrary, the taxpayer  
20    shall use the method of apportionment provided by Subsection A  
21    of this section for the taxable year unless:

22                   (1) the taxpayer's corporate income tax  
23    liability for the taxable year, computed by the same method of  
24    apportionment used in the preceding taxable year, exceeds the  
25    corporate income tax liability for the taxpayer's immediately

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1 preceding taxable year; or

2 (2) the sum of the taxpayer's payroll factor  
3 and property factor for the taxable year exceeds the sum of the  
4 taxpayer's payroll factor and property factor for the  
5 taxpayer's base year. For purposes of this paragraph, "base  
6 year" means the taxpayer's first taxable year beginning on or  
7 after January 1, 1991.

8 C. For purposes of this section, "manufacturing"  
9 means combining or processing components or materials to  
10 increase their value for sale in the ordinary course of  
11 business, but does not include:

12 (1) construction;

13 (2) farming;

14 (3) power generation, except for electricity  
15 generation at a facility other than one for which both location  
16 approval and a certificate of convenience and necessity are  
17 required prior to commencing construction or operation of the  
18 facility, pursuant to the Public Utility Act [~~and the Electric  
19 Utility Industry Restructuring Act of 1999~~]; or

20 (4) processing natural resources, including  
21 hydrocarbons."

22 Section 2. Section 7-9A-7 NMSA 1978 (being Laws 1979,  
23 Chapter 347, Section 7, as amended by Laws 2001, Chapter 57,  
24 Section 3 and by Laws 2001, Chapter 337, Section 3) is amended  
25 to read:

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1 "7-9A-7. VALUE OF QUALIFIED EQUIPMENT.--

2 A. Prior to July 1, [~~2011~~] 2020, the value of  
3 qualified equipment shall be the adjusted basis established for  
4 the equipment under the applicable provisions of the Internal  
5 Revenue Code of 1986.

6 B. After June 30, [~~2011~~] 2020, the value of  
7 qualified equipment shall be the purchase price of the  
8 equipment unless the equipment is introduced into New Mexico  
9 and has been owned for more than one year prior to its  
10 introduction into New Mexico by the taxpayer applying for the  
11 credit, in which case the value shall be the reasonable value  
12 of the equipment at the time of its introduction into New  
13 Mexico; provided that no taxpayer shall for any taxable year  
14 claim a value of qualified equipment greater than two million  
15 dollars (\$2,000,000)."

16 Section 3. Section 7-9A-7.1 NMSA 1978 (being Laws 1983,  
17 Chapter 206, Section 6, as amended) is amended to read:

18 "7-9A-7.1. EMPLOYMENT REQUIREMENTS.--

19 A. Prior to July 1, [~~2011~~] 2020, to be eligible to  
20 claim a credit pursuant to the Investment Credit Act, the  
21 taxpayer shall employ the equivalent of one full-time employee  
22 who has not been counted to meet this employment requirement  
23 for any prior claim in addition to the number of full-time  
24 employees employed on the day one year prior to the day on  
25 which the taxpayer applies for the credit for every:

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1 (1) five hundred thousand dollars (\$500,000),  
2 or portion of that amount, in value of qualified equipment  
3 claimed by the taxpayer in a taxable year in the same claim, up  
4 to a value of thirty million dollars (\$30,000,000); and

5 (2) one million dollars (\$1,000,000), or  
6 portion of that amount, in value of qualified equipment over  
7 thirty million dollars (\$30,000,000) claimed by the taxpayer in  
8 a taxable year in the same claim.

9 B. After June 30, [~~2011~~] 2020, for every one  
10 hundred thousand dollars (\$100,000) in value of qualified  
11 equipment claimed by a taxpayer in a taxable year, the taxpayer  
12 shall employ the equivalent of one full-time employee in  
13 addition to the number of full-time employees employed on the  
14 day one year prior to the day on which the taxpayer applies for  
15 credit.

16 C. The department may require evidence showing  
17 compliance with this section. The department may find that an  
18 additional employee meets the requirements of this section,  
19 although employed earlier than one year prior to the day on  
20 which the taxpayer applies for the credit, if [~~he~~] the employee  
21 was only being trained prior to that date or [~~his~~] the  
22 employee's employment [~~is~~] was necessitated by the use of the  
23 qualified equipment."